

Planning Commission Date: November 12, 2003

Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report Prepared by: Kim Duncan

Public Hearing: Yes: X No:

Notices Mailed On: 10-31-03 Published On: 10-30-03 Posted On: 10-31-03

TITLE: **USE PERMIT NO. P-UP2003-40**

Proposal: A request to operate an internet cafe.

Location: 365 Jacklin Drive

APN: 026-28-029

RECOMMENDATION: **Approval with Conditions**

Applicant: Allan Uy, 4423 Fuller Street, Santa Clara, CA 95054.

Property Owner: Shapell Industries, 100 N. Milpitas Blvd., Milpitas, CA 95035

Previous Action(s): "S" Zone Tentative Map, GPA, Zone Change

General Plan Designation: Retail Sub-Center

Present Zoning: Neighborhood Commercial ("C1-S")

Existing Land Use: Multi-tenant shopping center

Agenda Sent To: Owner and applicant

Attachments: Plans, letter of description from applicant dated September 23, 2003

PJ#: 2352

BACKGROUND

In 1987, the Planning Commission approved an “S” Zone application for the Foothill Square shopping center. The approval included a 78,400 square foot retail building, which was constructed in 1988, and three separate building pads. In 1998, the Planning Commission approved an “S” Zone application for two outer pad buildings (Buildings A and C) and, in 2000, the Commission approved the third pad building (Building B). On June 14, 2000, the Planning Commission approved a use permit application for video rentals and, on September 11, 2002, a use permit application for a tutoring business.

Site Description

The Foothill Square shopping center is located on 9.6 acres at the northeast corner of Jacklin Road and Arizona Avenue. The parcel is zoned Neighborhood Commercial and contains a mix of retail uses typical to a neighborhood shopping center, such as Nob Hill Foods, offices, restaurants, video store, dry cleaner and tutoring center. Single-family residential uses surround the shopping center to the east, south and west. Milpitas High School lies to the north of the shopping center. The subject site is a 2,000 square-foot tenant space within the main retail building.

THE APPLICATION

This application is submitted pursuant to Section 57 (Conditional Use Permit) and Section 18.03-1 of the Zoning Ordinance. Section 18.03-1 allows arcades with mechanical or electronic games as a conditional use in the Neighborhood Commercial (C1) district. The applicant is requesting approval to operate a 2,000 square foot internet café.

The City’s Zoning Ordinance defines an arcade as “any business establishment or premises containing seven (7) or more mechanical or electronic game type machines”. Although the proposed business would meet this definition, the applicant is not proposing an arcade in the traditional sense. The Planning Commission has approved other internet cafes through the use permit process utilizing this definition.

PROJECT DESCRIPTION

The applicant proposes to provide internet access for patrons to conduct research, e-mail, interactive gaming and tournaments. In addition, the internet café will provide drinks and prepackaged snacks for patrons of the business. As the floor plans indicate, there will be thirty-four (34) computer stations along the perimeter of the tenant space, as well as eating counter with seven (7) stools, vending machines, microwave, refrigerator, and freezer. The proposed hours of operation will be from 12:00 noon to 12:00 midnight daily.

ISSUES

Parking

The proposed business operation is a relatively new land use, for which the City’s ordinances do not address parking requirements. The City’s parking ordinance allows the Planning Commission to determine the parking requirements for land uses that are not specifically addressed in the ordinance. It also allows the Commission to draw upon the experience of other local cities in reaching a determination (Milpitas Municipal Code XI-10-53.06).

The Planning Commission has approved similar types of uses at Crescent Square, Great Mall, Calaveras Square and Jacklin Square shopping centers. In addition, the Planning Commission made a

determination that parking for this type of use should be based on the same requirement as a restaurant (one (1) stall per three (3) seats). Based on the Planning Commission previous determination, parking demand for the proposed use of 34 computer stations and seven (7) seats at the eating counter is 13 parking stalls. Currently, the tenant has an allocation of 10 parking spaces based on the commercial retail parking ratio of 1 space per 200 square feet of tenant space, therefore the proposal will require three (3) additional parking spaces.

Foothill Square shopping center was constructed with 485 parking spaces provided, an excess of 93 of the 382 stalls required per ordinance for commercial parking requirements. These excess parking stalls were allocated to the three (3) pad buildings and additional parking required for restaurants. However, according to planning files there remain 6 excess stalls, therefore the required three (3) additional stalls are available for this use.

In discussions with the applicant, the peak parking demand time is anticipated to be after school, with 3-4 parking spaces required due to most customers arriving by bicycle or walking. According to the owner of two similarly sized Rivalution cafes located in San Jose, the two main peak parking demands times are after school and 8:00p.m. to 10:00 p.m. (for the adult crowd). During after school hours, approximately 3-5 parking spaces are used, with the majority of patrons arriving by bicycle or walking. Between the hours of 8:00 p.m. to 10:00 p.m., approximately 6-7 parking spaces are used. In addition, according to the city of San Jose planning staff, internet café parking requirements are based on 1 parking stall per 200 net square feet of tenant space, which is the same parking ratio requirement for commercial retail uses in Milpitas. Staff recommends the parking requirements for this and future internet café/gaming uses be considered at the commercial retail ratio of 1 space per 200 square feet of tenant space.

Conformance with the General Plan

The proposed project complies with the City's General Plan in terms of land use. The proposed use does not conflict with any General Plan Principle or Policy, and is consistent with Implementing Policy 2.a-I-3, which encourages economic pursuits, which will strengthen and promote development through stability and balance. It is also consistent with Policy 2.a-I-6, which endeavors to maintain a balanced economic base that can resist downturns in any one economic sector.

The proposed internet café will provide a retail high-tech type of use that serves the needs of neighborhood residents. Internet use is as commonplace as the television and phone; there is a need to provide internet access, as it can be used not only for entertainment but also as a research tool.

Conformance with the Zoning Ordinance

The proposed project is located in the Neighborhood Commercial Zoning District (C1) and is permitted conditionally in this district upon approval of a conditional use permit. As conditioned, the proposed internet café is not expected to generate an increase in noise or odors, negatively affect parking, or create health and safety hazards. In addition, the intent of the "C1" district is to provide the day-to-day shopping needs of the residential neighborhood. The project is consistent with this intent in that it provides nearby residents access to the internet and to participate in computer games.

Neighborhood/Community Impact

The proposed tenant is expected to have a positive community impact by providing a complementary use to the existing retail uses currently located in the shopping center. As stated in the applicant's

letter of description, the target market of patrons consists of students ranging from junior high school to college. The proposed internet café is located at the Foothill Square shopping center, directly south of Milpitas High School and it is anticipated the internet café will attract students from the high school.

As part of the original approval for Foothill Square shopping center, the property owner (Shapell) and Milpitas Unified School District (MUSD) entered into an agreement to restrict certain use types, such as record and liquor stores, adult bookstores and coin/token operated video arcades. The MUSD Superintendent reviewed this application and has no objections to the proposed internet cafe. In addition, the applicant is proposing a sign that states "No minors allowed during school hours or past 10:00 p.m. on school nights". Therefore, staff concludes that the internet café, as conditioned, will not conflict with the MUSD/Shapell agreement.

Conformance with CEQA

The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities—"...permitting,...licensing...of existing...private structures...involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination") of the California Environmental Quality Act (CEQA) Guidelines.

RECOMMENDATION

Close the Public Hearing. Approve Use Permit No. P-UP2003-33, based on the Findings and Special Conditions of Approval listed below.

FINDINGS

1. The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the state CEQA Guidelines.
2. The proposed internet café is consistent with the City of Milpitas Zoning Ordinance and General Plan in terms of land use for Neighborhood Commercial zoning as it is a retail use.
3. As conditioned, the proposed internet café is not anticipated to affect parking, or generate odors or health and safety hazards impacting the surrounding area. Therefore, the proposed project will not be detrimental or injurious to the public health, safety and general welfare.

SPECIAL CONDITIONS

1. This Use Permit No. P-UP2003-40 approval is for an 2,000 square foot, 34-station internet café as shown on approved plans dated November 12, 2003, except as may be otherwise modified by these conditions of approval. Modifications to the proposed use may require review and approval by the Planning Commission of an amendment to this use permit. (P)
2. The maximum approved number of internet stations is 34. Prior to issuance of a certificate of occupancy for this use, a sign measuring at least 8½ inches by 11 inches, with a lettering height of at least 3 inches, shall be placed in a conspicuous location near the restaurant front entrance stating "Maximum internet stations: 34, as per Use Permit Amendment No. P-UP2003-40 granted by the Planning Commission on November 12, 2003." (P)
3. This use shall be conducted in compliance with all appropriate local, state and federal laws and regulations. (P)

4. All roof-top equipment associated with this tenant space shall be shielded from view in a manner to the approval of the Planning Commission or its designee as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code. Prior to the issuance of any permit for any roof-top equipment which projects above the height of any existing parapet wall or screen, detailed architectural plans for the screening of this equipment and/or line-of-sight view analysis demonstrating that the equipment will not be visible from surrounding view points shall be reviewed and approved as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code, in order to assure the screening of said equipment is in keeping with and in the interest of good architectural design principles. (P)
5. If at the time of application for permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
6. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)
7. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for commercial services:
 - a. An adequate level of service for trash collection.
 - b. An adequate level of service for recycling collection.
 - c. After the applicant has started its business, BFI commercial representative shall determine the adequacy of the solid waste level of services. If the services found to be inadequate, the property owner/manager shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234, x-264. (E)
8. The developer shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire with the building permit application and pay the related fees prior to Building Permit issuance by the Building Division. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). (E)



RIVALUTION

NETWORK CENTER

To: The City of Milpitas Planning Commission
From: Allan Uy, Eric Banaag
Date: September 23, 2003
Re: Rivalution Network Center Business Plan

Rivalution Network Center is designed to be an Internet access center, equipped with 30-50 networked Internet-capable computer stations. These computer stations have been designed to serve a variety of purposes including, but not limited to:

- An aid to students and/or business professionals via the use of Microsoft Office applications (i.e. MS Word, Excel and PowerPoint)
- A research tool, providing access to the World Wide Web
- Socialization through online chatting and checking e-mail
- A healthy competitive atmosphere created through computer gaming competitions and tournaments

New Rivalution patrons are assigned a unique user account upon joining the Rivalution Network Center. When these patrons are in need of Rivalution's facilities and equipment, they rent blocks of computer time, which are usually purchased in hourly increments. The comprehensive business management program used on Rivalution's computer systems allows patrons to access all software programs available at the facility from any computer station. This management program also provides Rivalution's management team with the ability to monitor each of its patron's individual accounts.

Rivalution Network Center's target market consists of students at any level, ranging from junior high school to college. While students can use the facilities for school related projects, Rivalution does not offer tutoring or educational services of any kind. However, because students will frequent the center, one of Rivalution's primary goals is to offer these students a safe place to congregate and build a community outside of school.

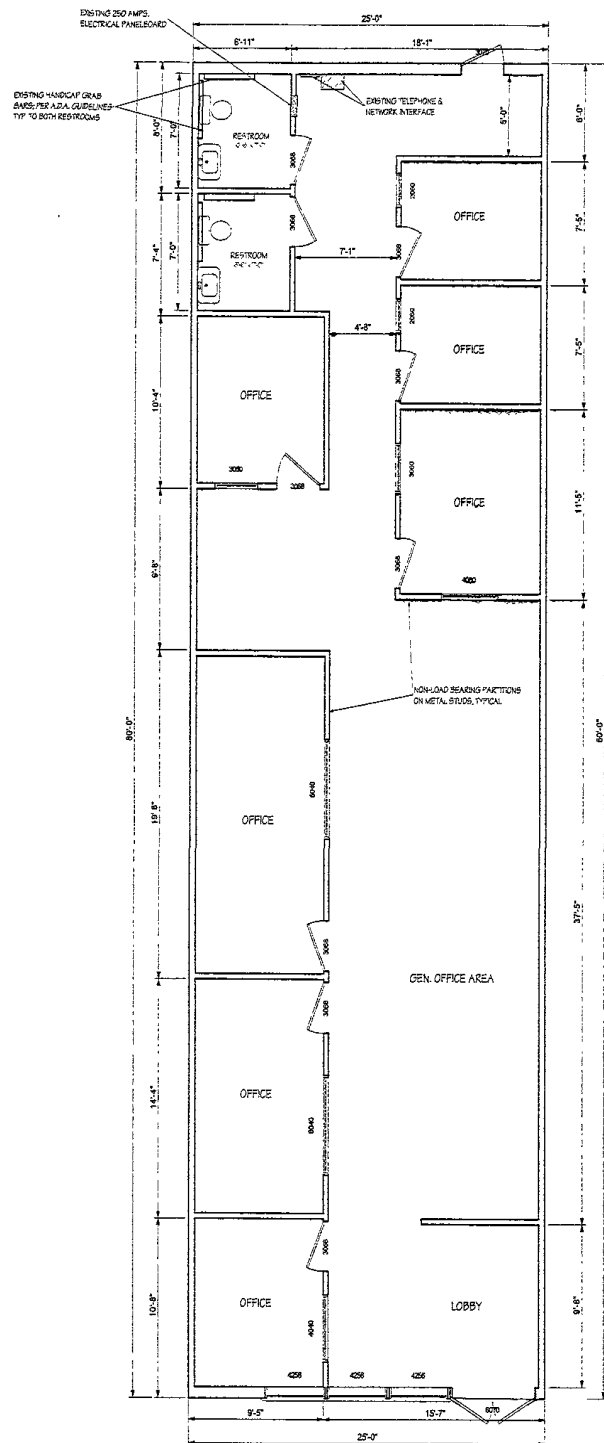
In addition to computer stations, Rivalution offers its patrons a comfortable lounge area for socialization. Rivalution also offers the option to purchase pre-packaged foods that can be cooked via microwave oven as well as beverages, in order to provide a "home-away-from-home" atmosphere.

Rivalution's friendly and inviting ambiance is coupled with the promise of a secure environment. Security cameras viewable over the internet are set up strategically throughout the Center in order to monitor all patron activity. Because a Rivalution membership requires each patron to provide proper identification (i.e. school ID card or CDL), Rivalution's management team will know each of its patrons by name and face, allowing a one-on-one relationship to develop between Rivalution and its patrons. Rivalution's management team holds the safety of its patrons as its number one priority.

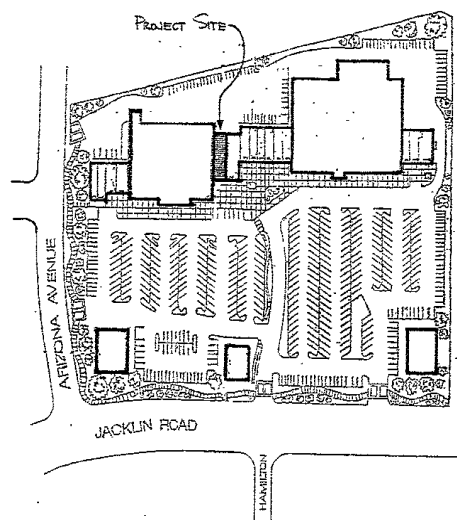
The Rivalution Network Center in Milpitas will be open for business between the hours of 12:00 p.m. to 12:00 a.m. daily.

For more information, please contact:

Allan Uy
408.712.7762
Eric Banaag
415.717.3965



EXISTING FLOOR PLAN
SCALE: 1/4" = 1'-0"

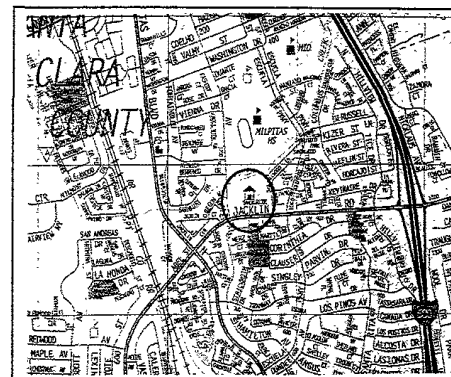


SITE PLAN
SCALE: 1" = 10'-0"



CONTRACTOR TO VERIFY ALL EXISTING CONDITIONS
PRIOR TO CONSTRUCTION. IF ANY DISCREPANCIES
ARE FOUND, NOTIFY ARCHITECT IMMEDIATELY.

ADJUST DIMENSIONS TO ALIGN WITH EXISTING
CONDITIONS IN THE FIELD, WHERE APPLICABLE.



VICINITY MAP

ZONING: COMMERCIAL
OCCUPANCY GROUP: B (SERVICE/OFFICE)
AREA OF WORK: 2,000 SQ. FT.

NUMBER OF STORIES: ONE
FIRE SPRINKLER SYSTEM: EXISTING

OCCUPANT LOAD: (48)
A) 38 COMPUTER WORKSTATION
B) 2 EMPLOYEES
C) 8 MISC. OCCUPANTS

PROJECT DATA

THIS PROJECT SHALL CONFORM TO THE
REQUIREMENTS OF THE 2001 CBC, UPC,
UMC, CEC & LOCAL BUILDING ORDINANCE
OF THE CITY OF MILPITAS.

CODE COMPLIANCE

- 1) DEMOLISH & REMOVE EXISTING NON-LOAD BEARING INTERIOR PARTITIONS; SEE DEMOLITION PLAN
- 2) BUILD NON-LOAD-BEARING WALLS; SEE FLOOR PLAN
- 3) INSTALL 2-NEW BACKLIGHTED EXIT SIGNS WITH BATTERY BACK-UP EMERGENCY LIGHTS
- 4) INSTALL ADDITIONAL LIGHTS FIXTURES, OUTLETS & POWER DROPS; RELOCATE EXISTING LIGHT FIXTURES AS REQUIRED; SEE ELECTRICAL PLAN
- 5) INSTALL NEW SINK, CABINETS AND COUNTERTOP; SEE FLOOR PLAN
- 6) REMOVE & REPLACE EXISTING CARPET FLOORING

SCOPE OF WORK

- 1 EXISTING FLOOR PLAN; SITE PLAN;
VICINITY MAP; PROJECT DATA;
SCOPE OF WORK; CODE COMPLIANCE;
DRAWING INDEX
- 2 DEMOLITION PLAN;
FLOOR PLAN
- 3 ELECTRICAL PLAN;
REFLECTED CEILING PLAN
- 4 SECTIONS; MISC. DETAILS

DRAWING INDEX

REVISIONS	BY

(C) THE PLANS, IDEAS & DESIGNS SHOWN HEREIN ARE THE PROPERTY OF F. F. THE ARCHITECT AND SHALL NOT BE REPRODUCED, IN WHOLE OR IN PART FOR ANY PURPOSE FOR WHICH THEY ARE NOT INTENDED FOR WITHOUT THE WRITTEN CONSENT OF F. F. THE ARCHITECT.

D. T. BUGAY Architecture
DIONY T. BUGAY, AIA
Architect
14000 Highway 100, Suite 100, Dallas, TX 75244
Tel: 972.381.1000 Fax: 972.381.1001



**TENANT IMPROVEMENTS FOR:
REVIVALUTION NETWORK CENTER
FOOTHILL SQUARE
386 JACKLIN ROAD, MILPITAS, CA 95035**

Date 9-25-03

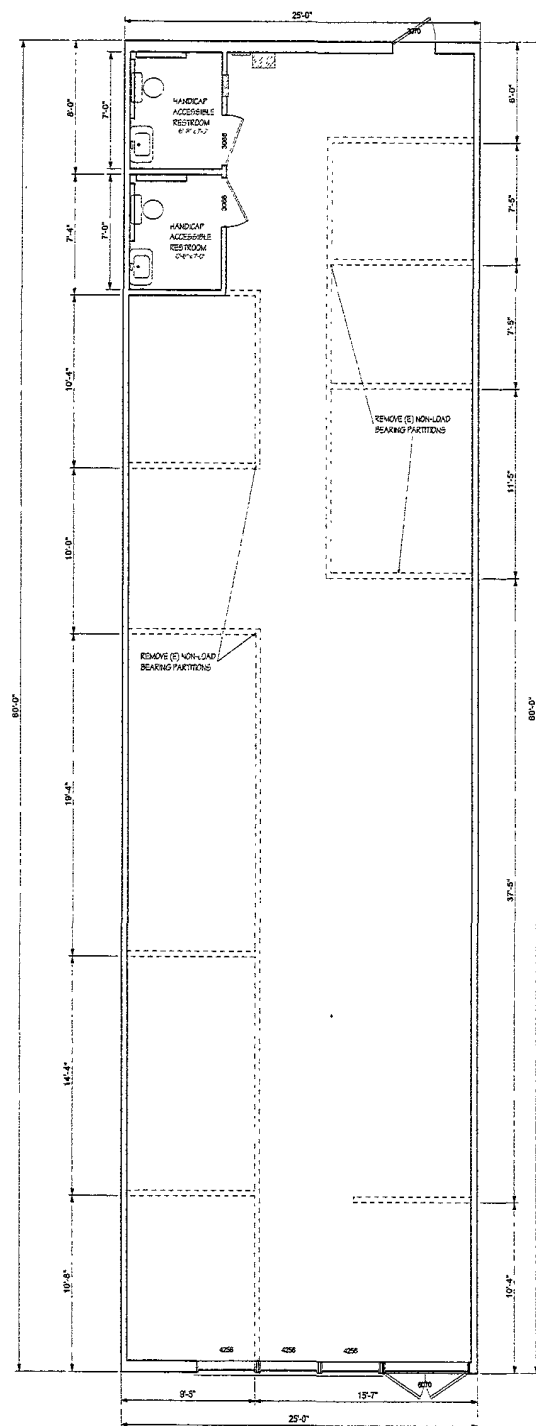
Scale AS SHOWN

Drawn	DTB
-------	-----

Job

Sheet 1

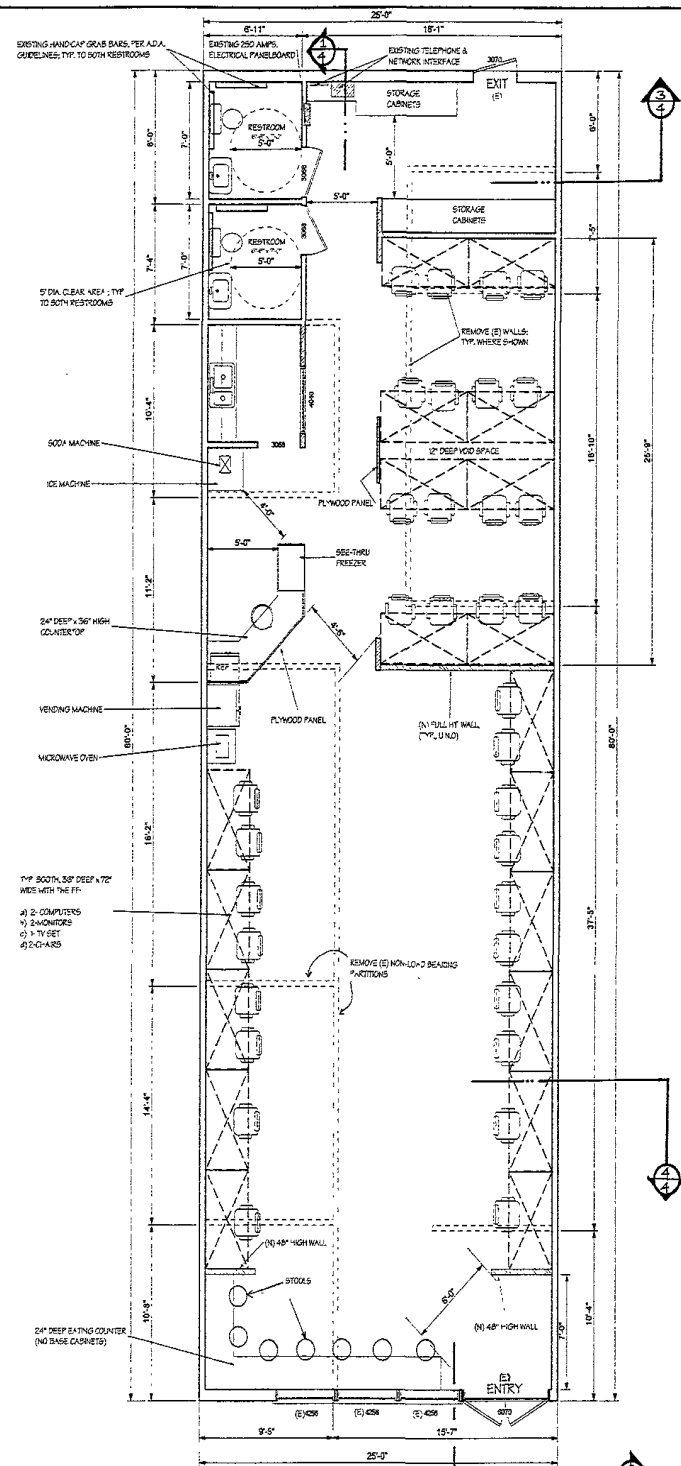
1



CONTRACTOR TO VERIFY ALL EXISTING CONDITIONS
PRIOR TO CONSTRUCTION. IF ANY DISCREPANCIES
ARE FOUND NOTIFY ARCHITECT IMMEDIATELY

ALL DIMENSIONS ARE TO FACE OF STD, UNLESS
NOTED OTHERWISE.

ADJUST DIMENSIONS TO ALIGN WITH EXISTING
CONDITIONS IN THE FIELD, WHERE APPLICABLE.



**TENANT IMPROVEMENTS FOR:
RIVALUTION NETWORK
FOOTHILL SQUARE
388 JACKLIN ROAD, MILPITAS, CA**

D. T. DUGAY Architecture

DIONY T. BUGAY, AIA
AY Architecture

DIONI T. BOCCAL, AIA
Architect
 License No. C38285
 1800 Bonita Park Drive, San Jose, CA 95126 Tel./Fax (408) 221-1111

(C) THE PLANS, IDEAS & DESIGNS KNOWN HEREIN ARE THE PROPERTY OF THE ARCHITECT AND SHALL NOT BE REPRODUCED, COPIED, REPRODUCED, IN WHOLE OR IN PART FOR ANY PURPOSE, FOR WHICH THEY ARE NOT INTENDED FOR WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT.

REVISIONS	DATE

Date 9-25-23

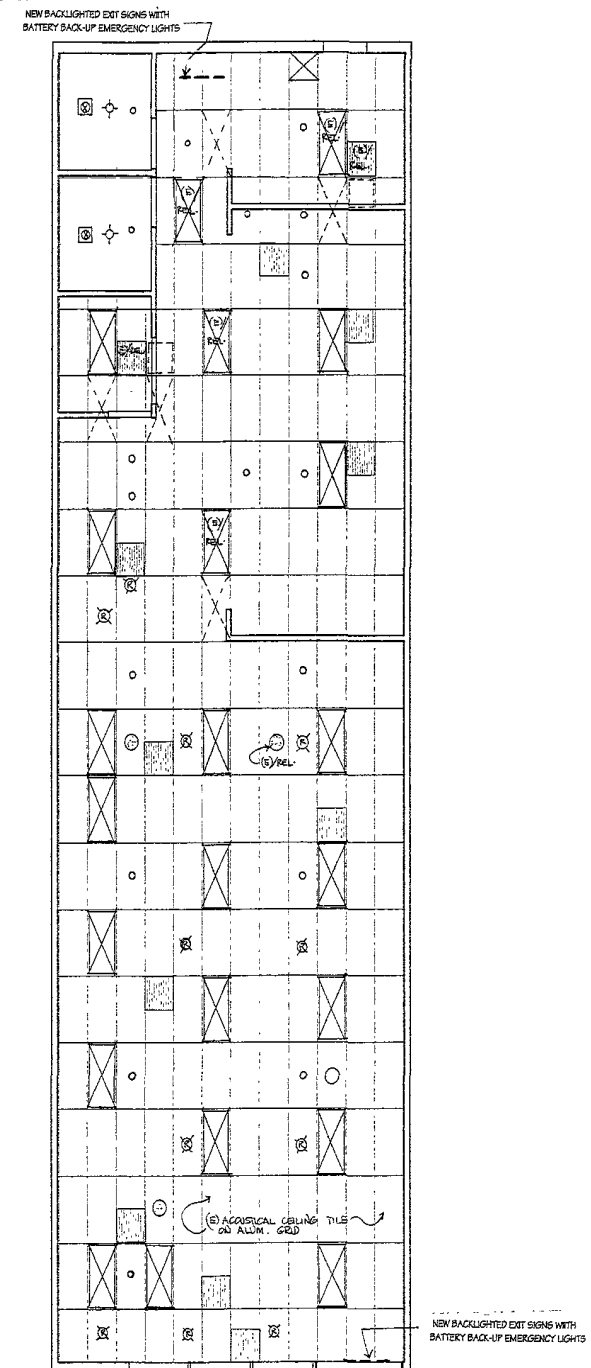
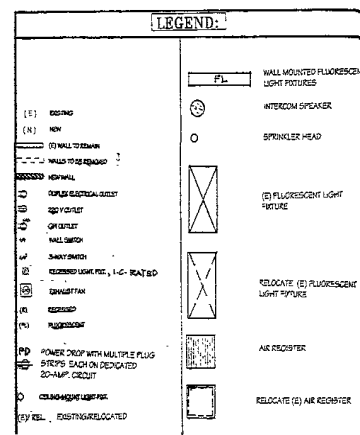
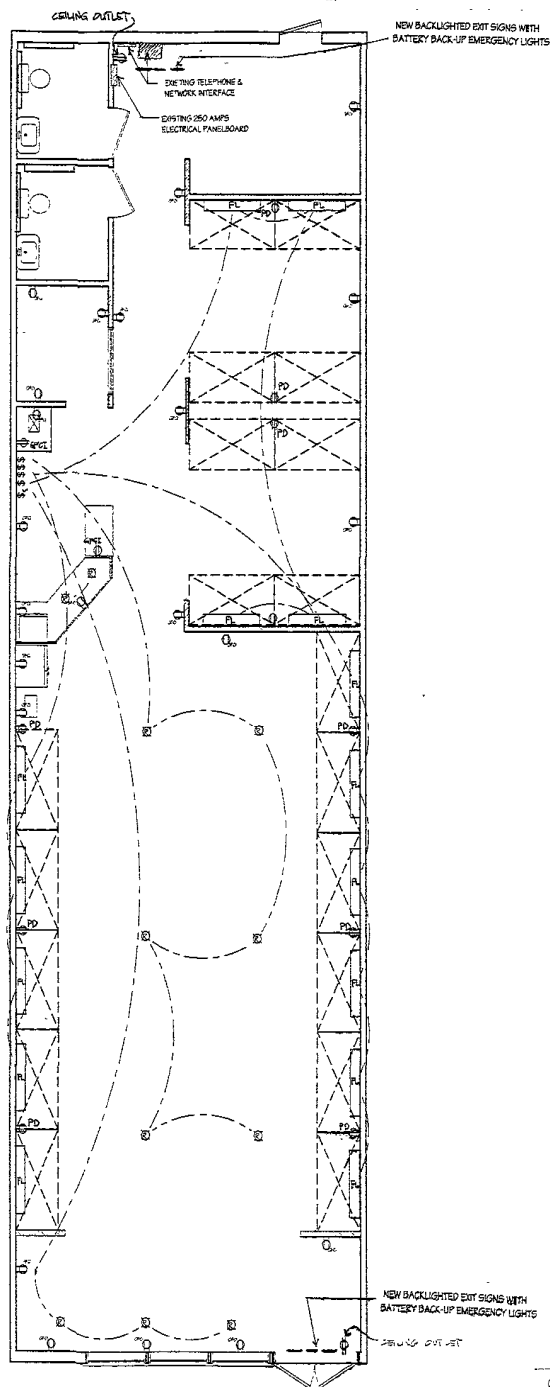
Scale AS SHOWN

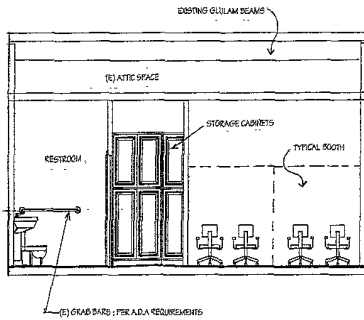
Drawn DTB

10b

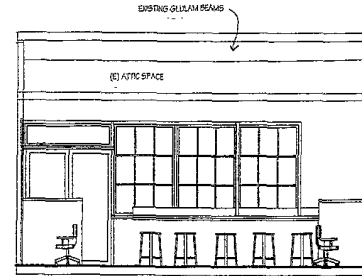
Sheet

2

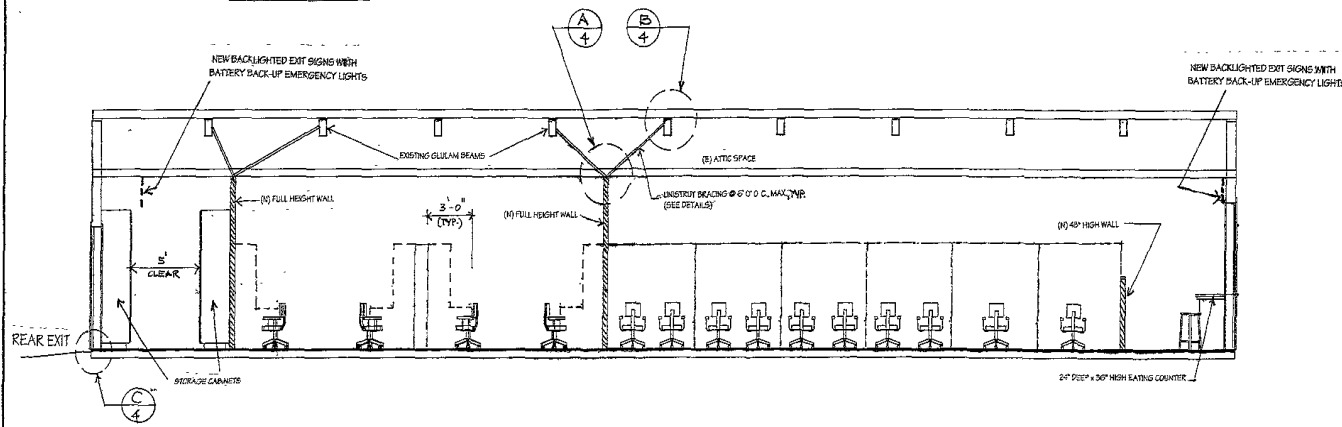




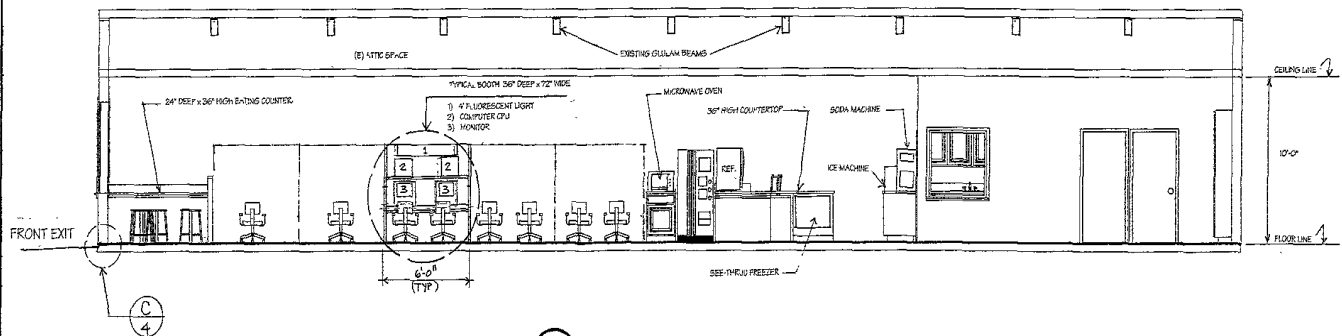
3 SECTION
SCALE: 1/4" = 1'-0"



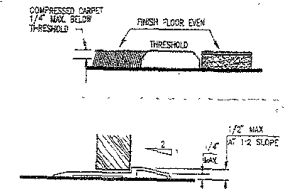
4 SECTION
SCALE: 1/4" = 1'-0"



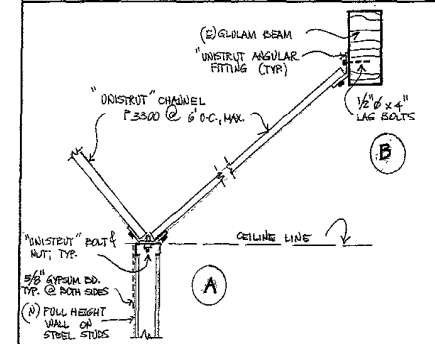
2 SECTION
SCALE: 1/4" = 1'-0"



1 SECTION
SCALE: 1/4" = 1'-0"

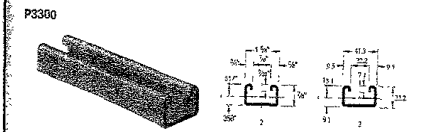


THRESHOLD DETAIL C



BRACING DETAIL

P3300TH & P3301 CHANNELS
FOR 1 1/2\"/>



Weight: 125 Lbs/Lf (201 kg/100 m)

Channel	Weight Lbs/Lf / kg/Lf	Ultimate Tensile Strength ksi / MPa	Material Thickness in / mm	Standard Lengths ft / m	Flanges 12\"/>
P3300	125	42	3/8	20, 25, 30, 35, 40, 45, 50, 55, 60, 65, 70, 75, 80, 85, 90, 95, 100	12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100

ANGULAR FITTINGS
FOR 1 1/2\"/>

P1546, P2094 thru P2100

Part Number	"A"	"B"	"C"
	Design	1/2"	in
P1546	40	90.5	40.9
P1548	42	96.5	42.9
P1550	44	102.5	44.9
P1552	46	108.5	46.9
P1554	48	114.5	48.9
P1556	50	120.5	50.9
P1558	52	126.5	52.9
P1560	54	132.5	54.9
P1562	56	138.5	56.9
P1564	58	144.5	58.9
P2094	60	150.5	60.9
P2096	62	156.5	62.9
P2098	64	162.5	64.9
P2100	66	168.5	66.9

WVC-50 Lbs. (6.5 kg)

P2101 thru P2104

WCC-58 Lbs. (26.3 kg)

Part Number	"A"		"B"	
	Degrees	mm	In	mm
P2101	17 1/2	444	17 1/2	444
P2102	19 1/2	493	19 1/2	493
P2103	21 1/2	542	21 1/2	542
P2104	23 1/2	591	23 1/2	591

UNISTRUT

CONTRACTOR TO VERIFY ALL EXISTING CONDITIONS PRIOR TO CONSTRUCTION. IF ANY DISCREPANCIES ARE FOUND, NOTIFY ARCHITECT IMMEDIATELY.

ALL DIMENSIONS ARE TO FACE OF STUD, UNLESS NOTED OTHERWISE.

ADJUST DIMENSIONS TO ALIGN WITH EXISTING CONDITIONS IN THE FIELD, WHERE APPLICABLE.